



Chowanski Garris Variance

File No.: VAR15-00001

STAFF REPORT

September 24, 2015

Application Information

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Request: Variance proposal to construct a single family residence on a 1-acre parcel on Lake Sammamish. There is a small tributary stream, West Village Park Creek, on the north side of the property and the proposed residence would be constructed within the 100-foot stream buffer, approximately 30 feet from the stream at the closest point. The proposed house would be setback approximately 145 feet from Lake Sammamish. Proposed mitigation includes removing existing rockeries armoring the streambank, grading back the streambank and planting a 35-60 foot wide buffer with native riparian plants, and removing an existing concrete boat ramp in the lake.

Location: 5104 NW Sammamish Road. See Vicinity Map (Exhibit 2)
King County Assessor Parcel: 202406-9053

Existing Land Use: Single family residence, outbuildings, maintained residential yard.

Surrounding Land Uses: All adjacent and surrounding lots are developed with single family residences. NW Sammamish Road and Interstate 90 are to the south of the parcel.

Zoning: Single Family Small Lot (SF-SL)

Comprehensive Plan: Low Density Residential

1. Project Description

Construct a 2-story single family residence (\pm 2,900 SF building footprint) on a 1-acre parcel adjacent to Lake Sammamish. There is a small tributary stream, West Village Park Creek, on the north side of the property, which is rated as a Class 2 salmon stream because it directly connects to Lake Sammamish. Class 2 salmonid streams require a 100-foot buffer. The maximum width of the parcel is approximately 125 feet and therefore a residence cannot be constructed outside the stream buffer and a variance is required. The residence is proposed approximately 30 feet at the closest point to the stream. The proposed house would be setback approximately 145 feet from Lake Sammamish, far exceeding the 35-foot buffer plus 15-foot building setback required from the lake.

The site contains an existing residence and outbuildings adjacent to the stream which would be removed, and the proposed construction would decrease the total impervious surface area within the stream buffer compared to existing site conditions.

The proposal includes mitigation: removing existing rockeries armoring the streambank, grading back the streambank and planting a 30-50 foot wide buffer with native riparian plants, and removing an existing concrete boat ramp in the lake. The SEPA Determination (Exhibit 7) provides specific details of the project mitigation measures.

2. Background and Permit Process

The subject site and proposal is located within jurisdiction of the Shoreline Master Program (SMP) because the proposed development is within 200 feet of the ordinary high water mark (OHWM) of Lake Sammamish. Lake Sammamish is designated as a “shoreline of statewide significance.” The proposal is for a variance to the stream buffer of West Village Park Creek, which is not a shoreline stream, but the stream buffer variance is considered under the SMP because it’s located within the shoreline jurisdiction of Lake Sammamish.

The City’s Critical Area Regulations have been integrated into the SMP, included as Appendix A. A 100-foot buffer is required for Class 2 Stream with Salmonids (IMC 18.10.785.C). The code includes administrative provisions for reducing stream buffers. However, a variance is required where proposed development encroaches by more than 25% of the standard stream buffer width (IMC 18.10.790.D.2). The proposed residence is located approximately 30 feet at the closest point to the stream, encroaching by more than 25% into the 100-foot required stream buffer, so a variance is required.

The City’s Critical Area Regulations include variance criteria under IMC 18.10.430. The State Department of Ecology (DOE) required the City to eliminate the reasonable use variance criteria (IMC 18.10.430.E) when integrating the critical area regulations into the SMP because State law (RCW 90.58, WAC 173-27) does not specifically allow for the concept of reasonable use. There are also variance criteria in the Washington Administrative Code (WAC 173-27-170) which apply. The WAC variance criteria are similar to the City’s variance criteria, but both variance criteria will be addressed in this staff report.

A Shoreline Variance requires final approval by State DOE. After the 14-day local appeal period is completed, the City will transmit the Shoreline Variance Permit to DOE and DOE may approve, approve with conditions, or deny the Shoreline Variance Permit within thirty (30) days of the date of submittal by the City of Issaquah. After DOE transmits its final decision or order back to the City of Issaquah (“date of filing”) there is a twenty-one (21) day appeal period.

3. Public Notice and Public Comments

A Shoreline Public Meeting was held by the City’s River & Streams Board on June 2, 2015. The meeting was advertised in the Issaquah Press (Exhibit 4). Minutes from the Public Meeting are included as Exhibit 6.

The Notice of Application (NOA) and notice of the public hearing was sent to adjacent property owners within 300 feet of the site on August 27, 2015 (Exhibit 4).

The site was posted with a sign providing the public hearing date and time (Exhibit 4).

Two (2) comment letters were received. The comments support the variance proposal. The comment letters are included in Exhibit 5.

4. State Environmental Policy Act (SEPA)

A Mitigated Determination of Nonsignificance (MDNS) was issued on August 27, 2015 (Exhibit 7). The comment/appeal period ended September 17, 2015. Muckleshoot Tribe comments on the SEPA Determination are also included in Exhibit 5. There were no other comments or appeal of the SEPA Determination. The SEPA mitigation measures are listed as recommended project conditions for the variance permit.

5. Variance Criteria (IMC 18.10.430.D) – Appendix A of the Shoreline Master Program

Variance Criteria Established:

- 1. The variance is in harmony with the purpose and intent of the relevant City ordinances and the Comprehensive Plan;*

The Comprehensive Plan designation for the site is Low Density Residential and the zoning is Single-Family Small Lot (SF-SL). The primary purpose of the zoning designation is to provide for single family development and neighborhoods (IMC 18.06.100.D). The proposed single family residential land use is consistent with the purpose and intent of the Comprehensive Plan and Land Use Code. The Comprehensive Plan and Land Use Code also include policies and standards to protect the environment and to mitigate environmental impacts. The proposed mitigation would meet policies and standards to protect the environment and mitigate for the environmental impacts of the proposal.

- 2. The variance shall not constitute a grant of special privilege which would be inconsistent with the permitted uses, or other properties in the vicinity and zone in which the subject property is located;*

Surrounding properties are zoned Single-Family Small Lot (SF-SL) and are currently developed with single family residences. The variance would allow for construction of a single family

residence, consistent with permitted uses of the zoning and with development on surrounding properties. Approval of a variance would not constitute a grant of special privilege.

3. *That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity, located in the same zone as the subject property and developed under the same land use regulations as the subject property requesting the variance;*

A variance is necessary due to the unique shape of the existing parcel. The 1-acre parcel is long and narrow. The parcel width ranges from approximately 40 feet to 125 feet at the widest point. Therefore, there is no available building area outside the 100-foot stream buffer plus 15-foot building setback. A variance would allow for construction of a single family residence, the same use rights permitted for other surrounding properties.

4. *That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;*

Approval of a variance would allow for removal of an existing substandard house and dilapidated outbuildings along the creek to be replaced with a new residence. Adjacent property owner comment letters support the proposal and improvements on the parcel (Exhibit 5). The proposal also includes in-stream and stream buffer enhancements to improve the existing environmental conditions. The granting of a variance, to allow construction of a single-family residence, would not be detrimental to the public welfare or injurious to the property or other improvements.

5. *That alternative development concepts that comply with the Code provisions to which the variance is requested have been evaluated, and that undue hardship would result if the strict adherence to the Code provisions were required;*

Because of the narrow parcel width (40 to 125 feet wide) there is no feasible building area outside the 100-foot stream buffer. Therefore, the applicant could not comply with stream buffer standards and redevelop the lot. The parcel would be undevelopable for a single family residence, resulting in undue hardship, if strict adherence to code provisions were required.

6. *The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and*

The existing parcel is a 1-acre lot, far exceeding the 6,000 SF minimum lot size of the underlying SF-SL zoning, and the lot is significantly larger than surrounding lakeshore residential parcels. The proposal for one residential house on a 1-acre lot avoids potential subdivision into multiple lots, thereby minimizing potential development impacts and also minimizing the variance request.

The proposed residence has been sited to keep the structure as far from the stream as feasible, while allowing for a reasonable building footprint relative to the parcel size. The proposal would remove 6 existing small structures/outbuildings (total 1,500 SF) that are within 25 feet of the stream. The stream buffer enhancement varies in width from 30 to 50 feet to maximize the width

of the enhanced stream buffer while accommodating construction of a residence. The overall impervious surface area within the stream buffer would be decreased (approximately 1,178 SF) compared to existing conditions. The applicant has scaled the variance request to minimize the extent of the variance from stream buffer code requirements and has provided substantial mitigation for the impacts of the redevelopment.

7. *The need for the variance is not the result of actions of the applicant or property owner.*

The applicant and property owner didn't create the existing parcel through a short plat or subdivision. The existing residence was constructed in 1925, prior to the stream buffer standards adopted by the City in 1996. The variance is due to existing parcel/site characteristics and not due to actions taken by the current owner or applicant.

6. Variance Criteria (WAC 173-27-170)

Review criteria for variance permits.

The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

RCW 90.58.020 states: "Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department."

A variance is necessary to develop the existing parcel with a single-family residence, which is a priority use under the SMP. RCW 90.58.020 allows for alteration of shoreline natural conditions for single-family residences.

(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

Strict application of the SMP/CAO 100-foot stream buffer standard would preclude use and development of the parcel for construction of a single family residence. The underlying zoning designation (SF-SL) allows a 6,000 SF minimum lot size; development of a single family residence on the existing 1-acre parcel may be considered a reasonable use of the property.

(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

The variance hardship is due to the irregular lot shape. The parcel width ranges from approximately 40 feet to 125 feet at the widest point. Therefore, there is no practical building area outside the 100-foot stream buffer. The variance request is not related to property owner or applicant actions or deed restrictions.

(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

The proposed single family residence is compatible with surrounding single family residential uses. The Comprehensive Plan, zoning and SMP limits development in the area to single family residential uses. The SEPA Determination (Exhibit 7) documents that the proposal (with required mitigation measures) would not cause adverse impacts to the shoreline environment.

(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

The subject site and surrounding properties are zoned Single-Family Small Lot (SF-SL) and are currently developed with single family residences. The variance would allow for construction of a single family residence, consistent with the development rights enjoyed on surrounding properties. Approval of a variance would not constitute a grant of special privilege.

(e) That the variance requested is the minimum necessary to afford relief; and

The existing parcel is a 1-acre lot, far exceeding the 6,000 SF minimum lot size of the underlying SF-SL zoning, and the lot is significantly larger than surrounding lakeshore residential parcels. The proposal for one residential house on a 1-acre lot avoids potential subdivision into multiple lots, thereby minimizing potential development impacts and minimizing the variance request.

The proposed residence has been sited to keep the structure as far from the stream as feasible, while allowing for a reasonable building footprint relative to the parcel size. The proposal would remove 6 existing small structures/outbuildings (total 1,500 SF) that are within 25 feet of the stream. The stream buffer enhancement varies in width from 30 to 50 feet to maximize the width of the planted stream buffer while accommodating construction of a residence. The overall impervious surface area within the stream buffer would be decreased (approximately 1,178 SF) compared to existing conditions. The applicant has scaled the variance request and provided substantial mitigation in efforts to minimize the variance from stream buffer code requirements.

(f) That the public interest will suffer no substantial detrimental effect.

The granting of a variance, to allow construction of a single-family residence, would not have a detrimental effect on the public interest. It would allow for a priority shoreline use and development comparable to surrounding properties. Adjacent property owner comment letters support the proposal and improvements on the parcel (Exhibit 5). The proposal would provide environmental improvements over existing site conditions; including stream and buffer enhancements, removal of outbuildings and impervious surface area, etc. (mitigation is detailed in the SEPA determination). These measures protect the public interest in preserving and improving environmental conditions along shorelines.

(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW [90.58.030](#) (2)(b), or within any wetland as defined in RCW [90.58.030](#) (2)(h), may be authorized provided the applicant can demonstrate all of the following:

The proposed development is located landward, not waterward, of the ordinary high water mark (OHWM) and therefore the criteria below do not apply.

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW [90.58.020](#) and shall not cause substantial adverse effects to the shoreline environment.

(5) Variances from the use regulations of the master program are prohibited.

CONCLUSIONS:

The proposed Chowanski Garris Variance meets the variance criteria under IMC 18.10.430.D and WAC 173-27-170. The proposal is consistent with the Issaquah Comprehensive Plan, Issaquah Land Use Code, Shoreline Master Program and other applicable development regulations.

7. Recommended Conditions

Based upon the application and submitted plans, the Administration recommends that the Hearing Examiner approve the Chowanski Garris Variance, File No. VAR15-00001, as presented in the Staff Report dated September 24, 2015; subject to the following conditions:

SEPA Mitigation Measures

1. The dense stream buffer planting adjacent to the stream shall be increased to a 15-foot width to allow more plant triangular spacing to improve shade and cover for the stream. This buffer planting shall adhere to the King County mitigation guidelines for planting density.
2. The cobble/gravel placement along the lakeshore and gravels within the stream channel shall meet specifications of the Washington Department of Fish and Wildlife (WDFW). The gravel augmentation along the lakeshore shall extend waterward of the ordinary high water mark (OHWM), subject to approval by WDFW.
3. The applicant shall coordinate with and receive WDFW approval for a stream bypass, seasonal construction timing limits, and temporary erosion sedimentation control (TESC) measures for the proposed in-stream work.
4. Final stream buffer enhancement plans are required for approval by the Issaquah Development Services Department (DSD) prior to issuing construction permits. Final plans shall include a grading plan, planting plan and a 5-year monitoring/maintenance plan with performance standards for monitoring success of the enhancement planting. The plans shall meet King County Critical Areas Mitigation Guidelines for monitoring performance standards.
5. The applicant shall provide an as-built plan of the stream buffer enhancement and the consulting biologist shall verify in writing that the planting has been installed per plan prior to the final approval of building permits.
6. The planted stream buffer area shall be recorded on the property title as a Native Growth Protection Easement (NGPE); prohibiting construction and improvements in the buffer area to preserve the planted native riparian vegetation. The NGPE shall be recorded prior to final building permit approval.
7. A 5-year monitoring/maintenance period is required for the stream buffer enhancement. The applicant shall provide a bond amount equal to 50% of the cost of plants, labor and the 5-year monitoring/maintenance cost prior to final building permit approval.

Recommended Variance Conditions

8. The applicant is responsible for permits and compliance with all federal, state, or local statutes, ordinances, or regulations applicable to this project.
9. Any conditions of a Hydraulic Project Approval (HPA) from Washington State Department of Fish and Wildlife (WDFW) shall be considered conditions of this permit. The applicant

shall provide copies of the HPA from WDFW prior to issuance of construction permits.

10. A City of Issaquah Building Permit shall be approved prior to commencing clearing, grading, and construction activity.

Permit Timing

This permit requires a 14-day local appeal period after the Hearing Examiner decision. After the local appeal period has expired, the City will transmit the Variance to the Washington Department of Ecology (DOE). DOE may approve, approve with conditions, or deny the Variance within thirty (30) days of the date of submittal by the City of Issaquah. After DOE transmits its final decision or order back to the City of Issaquah (“date of filing”) there is a twenty-one (21) day appeal period. The decision on the Variance may be appealed to the State Shoreline Hearings Board during this 21-day appeal period.

Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of approval of the Variance by the Department of Ecology or the Attorney General.

Exhibits

1. Variance application, received April 17, 2015
2. Vicinity Map
3. Site Plans and Critical Areas Report, dated April 17, 2015
4. Public Notifications
5. Public/Agency Comments
6. Shoreline Public Meeting (River & Stream Board) minutes
7. SEPA Determination, issued August 27, 2015
8. Variance Staff Report, dated September 24, 2015